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IN THE

Supreme Court of the United States

October Term, 1970

70-5251

ANDRES G. VIGIL,

Petitioner,

vs.

WILLIAM J. HANRATTY and the MIDDLE RIO GRANDE CONSERVANCY DISTRICT,

Respondents.

NO. ~~1469~~

RESPONSE OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT TO PETITION FOR WRIT OF CERTIORARI

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1. **JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.**

It must be called to the attention of this Court that throughout this proceeding, so far as is known to this Respondent, the petitioner herein has not proceeded In Forma Pauperis until his petition in this Court. He did not so proceed in the trial court in Cause No. 4335, *Hanratty v. Archibeque, et al,* District Court of Sandoval County, New Mexico (judgment attached as Appendix A, pages 6 through 8 of petition) or in securing the transcript and docketing the same in the Supreme Court of the State of New Mexico under Cause No. 9039 in said Court (Appendix A, pages 1 through 3 to the petition). The foregoing is called to the attention of this Court since the forms filed by the petitioner appear to be in accordance with the Rules of this Court.

2. **COMPLIANCE WITH RULES OF THE SUPREME COURT OF THE UNITED STATES.**

Though the papers filed with the Court In Forma Pauperis may comply with Rule 53 of the Rules of this Court, the lack of a transcript of the record leaves this Court in the position of granting or denying a petition for a writ of certiorari on statements in the petition, some of which are outside the record, and limit this Court to a reading of the decisions of the trial court and the Supreme Court of the State of New Mexico. Without question, the decisions cited by the New Mexico Supreme Court support its judgment, based on the transcript before it.

3. **THERE IS NO CONFLICT WITH ANY DECISION OF THIS COURT.**

In this case, there are no apparent conflicts nor any specifically pointed out by the petitioner with any decision which may have been rendered by this Court and cited by the petitioner. Either the cases cited by petitioner are criminal cases, completely distinguishable on their facts,

or are civil cases which apply principles of law to facts not at all similar to the case at bar.

The case of *Hansberry v. Lee*, 311 U.S. 32, 85 L. Ed. 22, 61 S. Ct. 115, is so clearly distinguishable, in the opinion of the Respondent, that it is no precedent in this case for granting certiorari. In that case a judgment in a suit, not brought as a class action but erroneously stipulated to be such, could not be considered res judicata. The fact that there were different parties in the second suit, who were not designated as parties and were not served with process in the first suit, prevented the application of the principles of res judicata. The case before this Court has none of these features.

This Court, in the case of *Larkin v. Paugh*, 276 U.S. 431, 72 L. Ed. 640, 48 S. Ct. 366, held that a judgment of an Indiana court could not be collaterally attacked. See also *Martin v. Gray*, 142 U.S. 236, 35 L. Ed. 997, 12 S. Ct. 186.

4. **THERE IS NO CONSTITUTIONAL QUESTION.**

A. The petitioner does not assert that he has at any time been deprived of any direct remedy for attacking the judgment he seeks to question. It is "horn-book law" that there are direct remedies for attacking judgments. Rather he seeks in this proceeding — which is a different proceeding — to collaterally attack, by matters outside the record, a judgment in a prior action to which he was a party. He does not question that the District Court of Sandoval County, New Mexico, is a court of general and competent jurisdiction (see *New Mexico Constitution*, Article VI, Section 13). A reading of the District Court's order (Appendix A, pages 6 through 8 of petition), and of the decision of the Supreme Court of the State of New Mexico (Appendix A, pages 1 through 3 of petition), together with authorities cited in the Supreme Court's opinion, clearly demonstrate that no constitutional question is involved.

In the early case of *Harvey v. Tyler*, 69 U.S. 329, 17 L. Ed. 871, 2 Wallace 328, this Court recognized substantially the same rules as are applied by the New Mexico Supreme Court.

B. Rule 18 of the New Mexico Supreme Court Rules of Civil Procedure does not deprive petitioner of constitutional rights. This question was not raised by the Supreme Court of the State of New Mexico. A reading of the order on the first motion for rehearing (Appendix A, page 4 to the petition) and the order entered on the second motion for rehearing (Appendix A, page 5 of petition) set forth the considerations of the Court of petitioner's motions and any brief submitted in support thereof. Petitioner again, with matters outside the record, seeks to question the validity of this rule.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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~~No. 7102~~

WILLIAM J. HANRATTY and MIDDLE RIO GRANDE CONSERVANCY DISTRICT,

Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENTS

1. In deference to Petitioner's initial right to frame his own case, Respondent Hanratty will not set out separate and contravening OPINION BELOW, JURISDICTION, QUESTIONS PRESENTED, STATUTES INVOLVED, AND STATEMENT, but note must be made of the numerous references to matters outside the record, especially in the STATEMENT.

2. Rule 12 (1) of the United States Supreme Court states that the Petitioner must file a certified transcript of the record of the case. There is no indication that this has been done. Certiorari should be denied by reason of Petitioner's failure to comply with the relevant rules of this Court.

3. Respondent Hanratty challenges Petitioner's standing to proceed In Forma Pauperis. At the State level in the District Court and in the Supreme Court, Petitioner proceeded, not as an indigent, but as a conventional party with retained counsel. The circumstances which impoverished the Petitioner since the

last State Court proceeding should be explained in detail. That a retained counsel submits on behalf of Petitioner, pleadings In Forma Pauperis is itself paradoxical.

4. The first reason argued as to why certiorari should be granted is that the decision below failed to grant Petitioner a procedural right to attempt a collateral attack on a judgment. Factually, this is wrong. Petitioner indeed attempted to collaterally attack a judgment; he in no way was foreclosed from raising this issue. Both State Courts below came to grips with the issue and did not allow the collateral attack, but neither Court prevented the Petitioner from raising the point and arguing it as eloquently as he desired.

If Petitioner is arguing that the doctrine against collateral attack is unsound, he must overcome a singularly impressive body of law, including pronouncements of this Court. **Morris v. Jones, 329 U.S. 545,** rehearing denied **330 U.S. 854.**

Petitioner cites two cases. **Hansberry v. Lee, 311 U.S. 32,** is easily distinguishable because of the lack of

identity of the parties in the primary case and in the collateral case. **National Association for the Advancement of Colored People v. Alabama, 377 U.S. 288**, is not on point.

5. The second point, that the New Mexico Supreme Court rules prevent adequate review, is not persuasive for several reasons. Petitioner, first, is burdening this Court with matters not in the record. (This would be evident if the record were available to this Court.) Petitioner had his day in court in the District Court. Petitioner had his day in court in the Supreme Court. He is not entitled to have an apparent endless series of hearings in the Supreme Court, whether denied for procedural reasons or not. If there is a legal proposition to that effect, Petitioner has not favored this Court with his authority. **Dixon v. Duffy, 344 U.S. 143**, is not relevant.

6. The third reason urged by Petitioner is that action by State Courts in an application of State power which this Court has jurisdiction to review. This is doubtless so, but only when there is a substantial indi-

cation that the State Court acted contrary to the Constitution; there is no such indication here.

7. Petitioner next argues that when the basis for state judicial acts is ambiguous or uncertain, this Court exercises jurisdiction to vacate and remand. Assuming arguendo that this rule is somehow relevant, the Supreme Court had an unambiguous and certain basis for its decision as is amply demonstrated by the citations in the decision. (Petitioner's Appendix A) The cases cited by Petitioner are examples of this Court remanding to the State Court for reasons not relevant here.

8. There is no substance to Petitioner's claims.

Petitioner's apparent stance, that the question of validity of process against him in a prior foreclosure has never been considered, is disingenuous. The District Court ruled that service of process in the foreclosure action against Petitioner was valid. The questions in this litigation have been answered, some of them twice.

Petitioner cites the case of **Flaska v. State, 51 N.M.**

13, 177 P.2d 174 (1946) in the STATEMENT regarding his argument that he was wrongfully denied rehearings. This case holds precisely contrary to Petitioner's theory. It quotes with approval this language:

> "It would be mischievous in a high degree to permit the re-opening of controversies every time a new judge takes his place in the court, thereby encouraging speculation as to the probable effect of such changes upon principles previously declared and enforced in decided cases." **McCutcheon, Admr. v. Homer, 43 Mich. 483, 5 N.M. 668, 38 Am. Rep. 212.**"

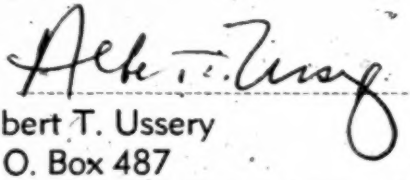
Respondent will not attempt to be more eloquent.

CONCLUSION

Inasmuch as no basis has been established by Petitioner, it is submitted that Petitioner's Petition for Writ of Certiorari should not be granted.

Respectfully submitted,

USSERY, BURCIAGA & PARRISH

By: 

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